

Remarks

Upon entry of this amendment, claims 1-11, 14 and 17-18 will be pending in the application. Claims 1, 8, 9, 10, 11 and 17 are being amended to put them into proper U.S. format. In addition, claim 10 is being amended to include additional examples. Support for these new examples is found in the specification at pages 79-80. Claims 1, 10 and 17 are also amended to recite that the compound may be a pharmaceutically acceptable salt and/or N-oxide of a compound of formula (I). Support is found in the specification at page 9, lines 24-29. New claim 18 is being added and recites an embodiment of R³. Support is found in claim 5 as originally filed. No new matter is being added.

Rejection under 35 USC 112, 2nd paragraph

On page 2 of the Office Action, claim 17 is rejected under 35 USC 112, 2nd paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The Examiner asserts that the phrase "e.g." renders the claim indefinite.

Applicants have deleted the phrase "e.g. halo or imidazolyl" from claim 17, such that the rejection is now believed moot.

Double Patenting Rejection

On page 3 of the Office Action, claims 1-11, 14 and 17 are rejected under 35 USC 101 as claiming the same invention as that claimed in US Patent No. 7,109,213 ("US '213"). The Examiner asserts that the claimed subject matter is identical.

Applicants respectfully submit that the subject matter of the present claims is not identical to that claimed in US '213. In the present claims, the ring (b) of R⁵ (in the group R⁴) is non-aromatic. In US'213, the ring (b) of R⁵ (in the group R⁴) is aromatic. Reconsideration and withdrawal of the rejection is respectfully requested.

Information Disclosure Statement ("IDS")


The Applicants acknowledge the Examiner's consideration of the IDS filed June 22, 2004. Applicants note that a Supplemental IDS was filed on May 25, 2007.

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Conclusion

The issues raised in the above-referenced Office Action have been addressed and overcome. Reconsideration and withdrawal of the rejections is respectfully requested. If any issues remain, the Examiner is invited to contact the undersigned Attorney for Applicants.

Respectfully submitted,


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